

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Emilio DeSimone/954-797-1085

PREPARED BY: Emilio DeSimone/954-797-1085

SUBJECT: Resolution

AFFECTED DISTRICT: N/A

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: CONTRACT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH ACAI ASSOCIATES, INC. FOR MISCELLANEOUS ARCHITECTURAL SERVICES.

REPORT IN BRIEF: The Town solicited proposals for firms to provide continuing miscellaneous architectural services. The Town Council approved the selection of Acai Associates, Inc. as one of two firms that the Town would be entering into contracts with by Resolution R-2007-99. Staff negotiated with Acai Associates, Inc. as directed by Resolution R-2007-99 and presents the attached contract for execution by the Mayor. This master contract will establish an hourly rate schedule that will be the basis of pricing for all projects. As work assignments are identified, the Public Works/Capital Projects Director or his designee will negotiate a Memorandum of Understanding defining the scope of work to be completed and the price for this work. All Memorandums of Understanding will be executed administratively. The initial term of this contract is two (2) years with options to extend the contract for an additional two (2) year term by mutual agreement of the parties. Contract extensions, if appropriate will be handled administratively by staff subject to budgetary approval by Town Council.

PREVIOUS ACTIONS: Resolution R-2007-99.

CONCURRENCES: This contract was negotiated by the Procurement Manager and the Public Works/Capital Projects Director. The contract has been reviewed by the Town Attorney's office.

FISCAL IMPACT: Yes

Has request been budgeted? Yes

If yes, expected cost: dependent on the number of work assignments

Account Name: Various Capital Improvement Program Accounts

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s): Resolution, Master Agreement, Consultant information, W9,
Exhibit "A" Hourly Rates

RESOLUTION R-2008-_____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT
WITH ACAI ASSOCIATES, INC. FOR MISCELLANEOUS
ARCHITECTURAL SERVICES.

WHEREAS, the Town Council approved the selection of Acai Associates, Inc. to perform miscellaneous architectural services by Resolution R-2007-99; and

WHEREAS, staff negotiated a master contract with Acai Associates, Inc. which establishes hourly rates to be charged for all projects; and

WHEREAS, as the need arises, Acai Associates, Inc. will be required to enter into a Memorandum of Understanding with the Town to authorize the work for each described scope of services.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council authorizes the Mayor to execute a contract with Acai Associates, Inc. for miscellaneous architectural services which is attached hereto and identified as Attachment "A".

SECTION 2. The Town Council of the Town of Davie does hereby authorize the appropriate staff members to approve the Memorandum of Understanding for services which are derived from the rate structure of this master agreement and limited by the provisions of "continuing services" as defined by F.S.S. 287.055.

SECTION 3. The initial term will expire June 20, 2009 with an option to extend the contract for an additional two (2) year term by mutual agreement of the parties. Contract extensions must be approved by the Town Council.

SECTION 4. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2008

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2008

**AGREEMENT BETWEEN THE TOWN OF DAVIE AND ACAI ASSOCIATES, INC.
FOR MISCELLANEOUS ARCHITECTURAL SERVICES**

THIS AGREEMENT, made and entered into the 1st day of August, 2007, by and between:

TOWN OF DAVIE, FLORIDA
a municipal Consultant
6591 Orange Drive
Davie, Florida 33314
(hereinafter referred to as "TOWN")

Acai Associates, Inc.
2937 West Cypress Creek Road, Suite 200
Fort Lauderdale, FL. 33309

(hereafter referred to as "CONSULTANT")

WHEREAS, the Town issued a Request for Proposal (B-07-16) for Services; and

WHEREAS, the intent of the Town staff is to recommend multiple awards to the Town Council and establish a list of qualified firms; and

WHEREAS, the recommended firms will provide professional services for projects that do not exceed \$1,000,000.00 in basic construction cost or \$50,000.00 for a planning or study activity pursuant to the "continuing services" Section 287.055, Florida Statutes; and

WHEREAS, the Town Council approved staff's recommendation by Resolution R-2007-102 and authorized the Town Administrator or his designee to negotiate contracts for such services.

NOW, THEREFORE, in consideration of the benefits provided by CONSULTANT to the citizens of Davie and the covenants and conditions herein expressed and the faithful performance of all such covenants and conditions, the parties agree as follows:

Section 1.

1.01 The above recitals are true and correct and are incorporated herein.

Section 2. TERM

2.01 This Agreement shall be effective upon the approval of the Town Council and shall terminate two (2) years from that date. However, either party may terminate this Agreement by providing a thirty (30) calendar days written notice. The TOWN shall have the option to renew this Agreement for one (1) additional two (2) year terms upon the same terms, conditions and limitations imposed hereby.

Section 3. SCOPE OF SERVICES

3.01 CONSULTANT acknowledges that its firm is on a list of Architectural and Engineering firms to be considered by the Town to provide professional services for projects that do not exceed \$1,000,000.00 in basic construction cost or \$50,000.00 for a planning or study activity pursuant to the "continuing services" Section 287.055, Florida Statutes.

3.02 CONSULTANT will conduct services as outlined in the TOWN'S RFP B-07-16. CONSULTANT will be required to provide experienced professional service in architectural/engineering disciplines.

3.03 CONSULTANT acknowledges that from time to time TOWN will contact CONSULTANT to perform a specified scope of work. All work to be performed by CONSULTANT must be authorized by the TOWN, with such authorization containing additional information, terms and conditions related to the specific project.

3.04 CONSULTANT will enter into a Memorandum of Understanding with TOWN for the "Authorization of Work" for each required scope of service to be completed by CONSULTANT.

Section 4. CONSIDERATION

4.01 Should TOWN request services from CONSULTANT, such services shall be provided in accordance with the price schedule, which is inclusive of all fees and expenses, including travel and other direct expenses. Said price schedule is attached hereto and incorporated herein as Exhibit "A". CONSULTANT may submit a revised exhibit "A" for consideration by TOWN during the term of the Agreement; however, CONSULTANT may only submit a revision once during any twelve month period.

Section 5. DUTIES AND RESPONSIBILITIES OF TOWN

5.01 Timely review and comment on all work product submitted by CONSULTANT and schedule all required meetings on a timely basis.

5.02 Other assistance as may be required by CONSULTANT to complete required work authorized by TOWN.

Section 6. INSURANCE REQUIREMENTS

- 6.01 Consultant agrees that prior to implementation of this Agreement they shall provide Town with Certificates of Liability Insurance evidencing compliance with the Insurance Requirements section.
- 6.02 Consultant shall obtain and maintain the following insurance coverage's with the listed coverage limits throughout the extended life of this agreement:
- a. Commercial General Liability - \$ 1,000,000
 - b. Automobile Liability - \$ 1,000,000
 - c. Products – Completed Operations - \$ 1,000,000
 - d. Workers' Compensation - Florida Statutory Limits (Minimum)
 - e. Employers Liability - \$ 500,000
 - f. Professional Liability (E&O) - \$ 500,000

General and Auto Liability coverage's shall be on an occurrence basis and shall reflect a combined single limit as shown above. Coverage must be issued following wording in the latest edition of the ISO Comprehensive General Liability policy and without restrictive endorsements.

- 6.03 Consultant shall require their insurance Agent or Carrier to provide the Town with a Certificate of Insurance on a standard ACORD form or equivalent form showing the policy Effective Date and Expiration Date for each of the above listed coverage's and shall replace any expiring certificates with new certificates throughout the life of this agreement and any required extended coverage period. Each such Certificate of Insurance shall be sent to and shall list the following as the Certificate Holder:

Town of Davie
Attn: Contracts Administration
6591 Orange Drive
Davie, FL 33314

- a. Each such Certificate shall include the following wording: **“the Town of Davie, its officers, and employees are named as additional insured's with respect to the General and Automobile liability of Consultant related to any work performed under this agreement”.**
 - b. Each such Certificate of Insurance shall provide for **30 days prior** written notice to the Certificate Holder of any cancellation prior to the expiration date of the coverage's listed on the certificate.
- 6.04 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida and having an AMBest insurance rating of not less than B+.
- 6.05 The Consultant shall submit a list of all claims presently outstanding against their professional liability coverage. The information must be provided by and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be provided by and signed by the agent of the insurance carrier.
- 6.06 Consultant shall require any sub-consultants to comply with these requirements in the same manner that Consultant is required to comply or Consultant shall provide for “General Liability Insurance” coverage that provides the above coverage's for themselves as well as any sub-consultants working under them.
- 6.07 Nothing in this Agreement shall be construed to affect in any way the Town's rights, privileges, and immunities, including sovereign immunity as provided by law as set forth in Florida Statute 768.28.

Section 7. INDEMNIFICATION:

7.01 The Consultant agrees to indemnify and hold harmless the Town, its officers, agents and employees from any and all liability, including defense costs, attorneys' fees, and all other fees incidental to the defense, loss, or damage the Town may suffer as a result of any and all suits, claims, demands, costs, or judgments against the Town arising from the acts or failure to act of the Consultant, its officers, employees and/or agents resulting from Consultants implementation of this contract. Nothing in this Agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statutes 768.28.

7.02 PATENT AND COPYRIGHT INDEMNIFICATION: The Consultant agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Agreement. Any and all work products produced for the Town of Davie during the term of this contract by Consultant shall be the sole property of the Town.

7.03 Nothing in the Agreement shall be construed to benefit or grant any claim or cause of action to any third party.

Section 8. TERMINATION AND DEFAULT

8.01 In the event CONSULTANT shall default in any of the terms, obligations, restrictions or conditions of the Proposal documents, TOWN shall give written notice by certified mail, return receipt requested to CONSULTANT of default and that such default shall be corrected or actions taken to correct such default shall be commenced within ten (10) calendar days thereof. In the event CONSULTANT has failed to correct the conditions of default or the default is not remedied to the satisfaction and approval of TOWN, TOWN shall have all legal remedies available to it, including, but not limited to termination of this Agreement in which case the CONSULTANT shall be liable for all procurement and reprocurement costs and any and all damages permitted by law arising from the default and breach of this Agreement.

8.02 TOWN shall have the right to terminate the Agreement, without cause, by giving written notice to CONSULTANT of such termination and specifying the effective date thereof, at least thirty (30) calendar days prior to the effective date of termination.

Section 9. RECORDS AND AUDIT

9.01 TOWN reserves the right to audit the records of CONSULTANT relating to this project at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by TOWN. If required by TOWN, CONSULTANT shall agree to submit to an audit by an independent certified public accountant selected by TOWN. CONSULTANT shall allow TOWN to inspect, examine and review the records of CONSULTANT at any and all times during normal business hours during the term of this Agreement.

Section 10. INDEPENDENT CONTRACTOR

10.01 It is understood and agreed that CONSULTANT is and shall remain an independent contractor with respect to the services being performed by CONSULTANT pursuant to this Agreement and shall not, for any purpose, be deemed an employee of TOWN.

Section 11. CONFLICT OF INTEREST

11.01 CONSULTANT covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CONSULTANT further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONSULTANT or its employees, must be disclosed in writing to TOWN.

11.02 CONSULTANT is aware of the conflict of interest laws of Broward County and the State of Florida, Chapter 112, Florida Statutes (1993), as amended, and agrees that it will fully comply in all respects with the terms of said laws.

11.03 CONSULTANT warrants that it has not employed or retained any person employed by TOWN to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by TOWN any fee, commission, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of his privilege.

Section 12. ASSIGNMENT

12.01 This is a professional services Agreement whereby TOWN has expressly retained CONSULTANT. This Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of the TOWN which consent can be arbitrarily withheld.

Section 13. COMPLIANCE WITH LAWS

13.01 CONSULTANT shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, Town of Davie and of any other public authority which may be applicable to this Agreement.

Section 14. VENUE

14.01 Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida and the prevailing party to any resultant judgment shall be entitled to an award of all reasonable attorney's fees, paralegal expenses, interest and court costs incurred by such prevailing party against the losing party including reasonable appellant attorney's fees, interest and taxable costs.

Section 15. GOVERNING LAW

15.01 The validity, construction and effect of this agreement shall be governed by the laws of the State of Florida.

Section 16. INSOLVENCY

16.01 In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

Section 17. ENTIRE AGREEMENT

17.01 This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties, whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

Section 18. SEVERABILITY

18.01 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in Conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 19. NOTICES

19 . 01 All notices or other communications required by this Agreement shall be in writing and deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses unless otherwise specified herein:

6591 Orange Drive
Davie, Florida 33314

CONSULTANT:

Adolfo J. Cotilla, Jr.-President
Acai Associates, Inc.
2937 West Cypress Creek Road, Suite 200
Fort Lauderdale, FL. 33309

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above, in two (2) counterparts, each of which shall without proof or accounting for the other counterpart be deemed an original Contract.

Arai Associates
Corporation
BY [Signature]
President
Title

Witness:
Cindy Baldwin
Glenn Calabrese
Date: 2.25.08

Town of Davie, a Florida
Municipal Corporation

OWNER
ATTEST:

Russell Muniz
Town Clerk
(Seal)



Tom Truex
Mayor

Gary Shimun
Town Administrator
DATE: _____

APPROVED AS TO FORM AND
CORRECTNESS:

Town Attorney
Town of Davie

Council Approved: _____
Date

FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS					
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Detail by Entity Name

Florida Profit Corporation

ACAI ASSOCIATES, INC.

Filing Information

Document Number	H39075
FEI Number	650020223
Date Filed	01/22/1985
State	FL
Status	ACTIVE
Last Event	NAME CHANGE AMENDMENT
Event Date Filed	02/17/1986
Event Effective Date	NONE

Principal Address

2937 W. CYPRESS CREEK ROAD
200
FT. LAUDERDALE FL 33309
Changed 01/05/2005

Mailing Address

2937 W. CYPRESS CREEK ROAD
200
FT. LAUDERDALE FL 33309
Changed 01/05/2005

Registered Agent Name & Address

COTILLA, ADOLFO J JR.
2937 W. CYPRESS CREEK ROAD
200
FT LAUDERDALE FL 33309 US
Name Changed: 10/18/1996
Address Changed: 01/05/2005

Officer/Director Detail

Name & Address
Title PSD
COTILLA, ADOLFO J JR

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific
Instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above ACAI Associates, Inc.	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.) 2937 W Cypress Creek Road, Suite 200	Requester's name and address (optional)
City, state, and ZIP code Fort Lauderdale, FL 33309	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
65 : 0020223
Or
Employer identification number
65 : 0020223

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶  Date ▶ **2-29-08**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

EXHIBIT "A"

Hourly Rates

1. CLERICAL \$58.00
CADD OPERATOR \$85.00
ARCHITECT/ENGINEER \$125.00
PROJECT ARCHITECT/ENGINEER \$160.00
PROJECT PRINCIPAL \$185.00
2. CHARGES FOR SPECIAL SERVICES WILL BE NEGOTIATED.
3. ABOVE RATES ARE FOR STRAIGHT TIME ONLY, AND AS LIMIT. OVERTIME REQUESTED BY THE OWNER WILL BE SURCHARGED @ 150%.
4. CHARGES FOR TESTING AND DIRECT COST EXPENSES WILL BE CHARGED AT 1.1 TIMES INVOICE COST. BACK UP TO BE INCLUDED WHEN INVOICING.
5. MILEAGE CHARGES AT CURRENT RATE ACCEPTED BY IRS. THERE IS NO CHARGE WITHIN BROWARD COUNTY.
6. INVOICE AMOUNTS NOT IN DISPUTE WILL BE CHARGED A LATE FEE PER FLORIDA PROMPT PAYMENT ACT.
7. RATES ARE REVIEWED ANNUALLY AND ARE UPDATED AT TIME OF INVOICING. A CURRENT LIST OF RATES IS ALWAYS AVAILABLE FOR CLIENT REVIEW.

S:\Sales\ACA1 Sales Folders\SG01.2 ToDavie Architectural Continuing Services\Hrly Rates Town of Davie .doc

